

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 11905 OF 2015

IN THE MATTER OF

An application under Article 102 of the  
Constitution of the People's Republic  
of Bangladesh

-AND-

IN THE MATTER OF:

Samia Rahman and others  
... Petitioners

-Versus-

Bangladesh represented by the  
Secretary, Ministry of Health and  
Family Welfare and others  
... Respondents

-WITH-

WRIT PETITION NO. 11582 OF 2015

IN THE MATTER OF:

Rubaiya Binta Rafiq and others  
... Petitioners

-Versus-

Bangladesh represented by the  
Secretary, Ministry of Health and  
Family Welfare and others  
... Respondents

Mr. Masood R. Sobhan with  
Ms. Fatema S. Chowdhury and  
Mr. A.F.M. Saiful Karim, Advocates  
.....For the Petitioners  
(in both the Rules)

Mr. A. F.M. Mesbahuddin, Advocate  
... For the respondent No. 5  
(in both the Rules)

Heard on: 07.03.2016, 30.03.2016,  
12.05.2016, 18.05.2016, 25.02.2016

**Judgment on: 01.06.2016**

Present:  
Mr. Justice Quamrul Islam Siddique  
and  
Mr. Justice Razik-Al-Jalil

Quamrul Islam Siddique, J:

Both the Writ Petition Nos. 11905 of 2015 and 11582 of 2015 are heard together and are being disposed of by this common judgment as they do involve common question of law and facts.

In Writ Petition No. 11905 of 2015, Rule Nisi was issued in the following terms:

“Let a Rule Nisi issue calling upon the respondents to show cause as to why the respondents shall not be directed to give registration number to the petitioners including other students of Bachelor of Dental Surgery (BDS) admitted in different Private Dental Colleges of Bangladesh securing above the cut-off mark 105 out of 200 in the admission test and having other requisite educational qualifications and /or such other or

further order or orders passed as to this Court may seem fit and proper.

In Writ Petition No. 11582 of 2015, Rule Nisi was issued in the following terms:

“Let a Rule Nisi issue calling upon the respondents to show cause as to why the respondents shall not be directed to give registration number to the petitioners including other students of Bachelor of Dental Surgery (BDS) admitted in different Private Dental Colleges of Bangladesh securing above the cut-off mark 105 out of 200 in the admission test and having other requisite educational qualifications and /or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rules, the respondents were directed to allow the petitioners including the other students of Bachelor of Dental Surgery (BDS) admitted in different Private Dental Colleges of Bangladesh who had secured above the cut-off mark 105 out of 200 in the admission test and having other requisite educational qualification to appear at their yearly final examination.

The facts of both the Writ Petitions Nos. 11905 of 2015 and 11582 of 2015 are more or less the same. The facts leading to the issuance of the Rules in both the Writ Petition Nos. 11905 of 2015 and 11582 of 2015 are as follows:

The petitioners appeared at the admission test for the BDS course as per the Medical and Dental Colleges Nitimala, 2011 having requisite combined Grade Point Average/GPA of minimum 8 in S.S.C. and H.S.C. examinations from the science faculty with at least 3.50 in any of the aforesaid examinations. The petitioners obtained above the cut-off mark 105 out of 200. The petitioners got themselves admitted into the Bachelor of Dental Surgery (BDS) for the session 2013-2014 in their respective institutions and they have been participating regularly in their academic classes. Earlier Bangladesh Private Medical College Association (BPMCA), as the petitioner, filed Writ Petition No. 1337 of 2014 impugning the recommendations of a meeting dated 23.09.2013 held at the instance of respondent No. 1 increasing the minimum “cut-off” mark from 110 to 120 out of total marks of 200 for admission into the MBBS/BDS courses for the session 2013-2014. The respondent No. 1 earlier framed the Nitimala, 2011 for admission of students into the MBBS/BDS

courses (hereinafter referred to as the Nitimala, 2011) stipulating the admission/qualification criteria for enrollment of students into the MBBS/BDS courses in all medical/dental colleges (public/private) in Bangladesh. Clause 2.2 of the Nitimala, 2011 states, inter alia, that an applicant must acquire a combined Grade Point Average (GPA) of minimum 8.00 in his/her respective SSC and HSC examinations from the Science Faculty provided that he/she does not carry less than GPA 3.50 in any of the aforesaid examinations. Again, respondent No. 1 by an office order dated 04.12.2012 stipulated admission criteria of the MBBS/BDS courses for the session 2012-2013 pursuant to which an applicant is required to have merit score of 110 for admission into the MBBS course and 105 into the BDS course. Respondent No. 2 issued an admission notification dated 31.8.2013 in the daily Prothom Alo dated 31.8.2013 for admission into the MBBS/BDS courses for the session 2013-2014. Clause No. 3 of the admission notification also stipulates that an applicant must have minimum GPA score 8.00 in both S.S.C. and H.S.C. examinations, but not less than 3.50 any of the examinations as per the Nitimala, 2011 as minimum criteria for eligibility for admission into the MBBS/BDS courses. The

admission notification did not require any applicant for the sessions 2013-2014 to have minimum merit score of 120 at the time when admission notification was issued in the daily Prothom Alo dated 31.8.2013. In the meantime, respondent No. 1 by the notification dated 19.9.2013 informed that a meeting to be held on 23.9.2013 to determine the pass mark required to be achieved by the students of MBBS/BDS courses in the “admission test”. In the meeting dated 23.9.2013 decision was taken to the effect that in order to be eligible for admission into the MBBS/BDS courses, an applicant must have a minimum “cut-off” mark 120 out of total marks of 200 for the session 2013-2014, thus introducing a new minimum qualification criteria for the “admission process” in the said courses for the session 2013-2014. Respondent No. 2 by his letter dated 07.1.2014 recommended that the minimum “merit score” for an applicant to be eligible for admission into the MBBS/BDS courses shall be fixed at “105”. Thereafter respondent No. 1 by his order dated 02.02.2014 extended the deadline for admission into the MBBS/BDS until 15.2.2014. In Writ Petition No. 1337 of 2014, a Division Bench of this Court made the Rule absolute and directed the respondents to allow the private medical

colleges to admit the students willing to take admission into the MBBS course for the session 2013-2014 with a “cut-off” mark at 105.

Being aggrieved by and dissatisfied with the judgment and order dated 18.9.2014 passed in Writ Petition No. 1337 of 2014, the respondent No. 1 moved before the Appellate Division of the Supreme Court of Bangladesh and the Appellate Division after hearing the Civil Appeal No. 147 of 2015 along with Civil Petition for Leave to Appeal No. 1110 of 2015 and 1111 of 2015 upheld the judgment and order dated 18.9.2014 passed by the High Court Division in Writ Petition No. 1337 of 2014 and dismissed the appeal and also held that 224 students who have already been admitted into 23 different private medical colleges are entitled to continue their study in the respective medical colleges where they got admission. All the petitioners have requisite educational qualification to get admission into the BDS course and they have been participating in their academic classes successfully and as such they are entitled to continue to their study of Bachelor of Dental Surgery (BDS) in their respective educational institutions. The respondents are required to be directed to give registration to the petitioners without further

delay. Respondents are bound by the judgment and order of the High Court Division passed in Writ Petition No. 1337 of 2014 and also the judgment and order passed by the Appellate Division passed in Civil Appeal No. 147 of 2015.

Being aggrieved by and dissatisfied with the inaction of the respondents to give registration to the petitioners including other students of Bachelor of Dental Surgery (BDS) admitted into different Private Dental Colleges of Bangladesh securing above the cut-off mark 105 out of 200 have moved this Court and obtained the instant Rules Nisi.

Respondent No. 5 entered appearance in both the Writ Petitions by filing separate Affidavits-in-Oppositions controverting all the material statements made in the Writ Petition Nos. 11905 of 2015 and 11582. The common case of respondent No. 5, in short, in both the Writ Petition Nos. 11905 of 2015 and 11582 of 2015, is as follows:

The petitioners have no locus standi to file the instant writ petitions. The authority took a resolution that in order to get admission into the MBBS/BDS courses, the admission seekers must secure 120 marks out of 200 and the admission seekers must also secure 40 marks out of 100 in the written examination.



If the minimum merit score is fixed at 105 out of 200 marks, an admission seeker getting 05 out of 100 marks in the written test shall have a possibility to get admission into the concern Bachelor of Dental Surgery (BDS) in the Private Dental Colleges of Bangladesh which is not desirable. The petitioners have totally failed to understand the content of the judgment and order passed by the Appellate Division. The judgment of the Appellate Division passed in Civil Appeal No. 147 of 2015 concerns only 224 students of different private medical colleges, who were the petitioners of the Writ Petition No. 1337 of 2014 and who were the admission seekers into the MBBS course. The petitioners being the admission seekers into the BDS course have no legal right to get the benefit of the said judgment. The grounds taken in the petition are not valid, lawful and tenable in the eye of law and as such both the Rules Nisi are liable to be discharged with costs.

Ms. Fatema S. Chowdhury, the learned Advocate appearing on behalf of the petitioners in both the writ petitions submits that all the petitioners have requisite educational qualifications to be eligible to get admission into the BDS course and that they have been participating in their academic classes

successfully and as such they are entitled to continue their study of Bachelor of Dental Surgery (BDS) in their respective educational institutions. She further submits that in response to an advertisement floated by the respondent No. 2 in the daily Prothom Alo dated 31.8.2013, the petitioners having requisite qualifications applied for admission into the BDS course. She also submits that the petitioners obtained cut-off marks 105 as determined by respondent No. 2 in the meeting dated 04.12.2012 for admission into the MBBS/BDS courses for the session 2012-2013. She then submits that the decision dated 23.9.2013 raising the minimum “cut-off” mark at 120 out of 200 has been declared illegal, unlawful and coram non-judice by the Appellate Division in Civil Appeal No. 147 of 2015 with Civil Petition for Leave to Appeal No. 1110 of 2015. She lastly submits that the petitioners having got the requisite qualifications are eligible to continue their study in BDS course and that the respondents are legally bound to give registration to the petitioners.

Mr. A.F.M. Mesbahuddin Ahmed, the learned Advocate appearing on behalf of respondent No. 5 in both the writ petitions, on the other hand, submits that the present applications are not tenable in the eye of law. He further submits that the

authority took a resolution that in order to get admission into the MBBS/BDS course, it was not enough for the admission seekers to get 120 cut off marks out of 200, rather the admission seekers must also get minimum 40 marks out of 100 in the written examination. He next submits that the judgment and order passed by the High Court Division in Writ Petition No. 1337 of 2014 and the judgment and order passed by the Appellate Division in Civil Appeal No. 147 of 2015 with Civil Petition for Leave to Appeal No. 1110 of 2015 and 1111 of 2015 are directed for the admission seekers of MBBS course and that the petitioners being the admission seekers of BDS course are not entitled to get the benefit of the above judgments and orders of the High Court Division and the Appellate Division. He then submits that in order to ensure better service in the health sector, the minimum cut-off mark should be at least 110 for MBBS/BDS course. He lastly submits that the present Rules are misconceived and as such are liable to be discharged with costs.

We have heard the learned Advocates of both the sides, perused the writ petitions, their annexures, affidavits-in-oppositions, their annexures and other relevant papers.

In these two writ petitions, the following papers have been filed by the parties and for proper adjudication of the Rules, we need to discuss these papers minutely. The papers are as follows:

- (1) Advertisement published in the daily Prothom Alo on 31.08.2013 (Annexure-E);
- (2) The Nitimala, 2011 promulgated by the Ministry of Health and Family Welfare (Annexure-C);
- (3) The meeting held in the Ministry of Health and Family Welfare on 04.12.2012 and the decision taken therein (Annexure-D);
- (4) The meeting held in the Ministry of Health and Family Welfare dated 23.9.2013 and the decision taken therein (Annexure-B);
- (5) The judgment and order passed by the High Court Division in Writ Petition No. 1337 of 2014 (Annexure-H);
- (6) The judgment and order passed by the Appellate Division in Civil Appeal No. 147 of 2015 with Civil Petition for Leave to Appeal Nos. 1110 of 2015 and 1111 of 2015 dated 16.9.2015 (Annexure-H1).

Now, let us discuss the above papers one by one and see the relevancy of the above papers with the present Rules:

(1) **Advertisement published in the daily Prothom Alo on 31.08.2013 (Annexure-E);**

An advertisement was published in the daily Prothom Alo on 31.8.2013 requesting the potential candidates willing to apply for admission into the MBBS/BDS courses for the sessions 2013-2014 under certain conditions. There are as many as 15(fifteen) conditions in the advertisement. Among those 15(fifteen) conditions, condition No. 3 is relevant for the purpose of disposal of the present Rules. Condition No. 3 of the advertisement (Annexure-E) is quoted below which runs as under:

“গণপ্রজাতন্ত্রী বাংলা-দশ সরকার  
স্বাস্থ্য অধিদপ্তর  
মহাখালী, ঢাকা-১২১২  
[www.dghs.gov.bd](http://www.dghs.gov.bd)

১ম বর্ষ এমবিবিএস ও ১ম বর্ষ বিডিএস কোর্স ভর্তির আ-বদন আহ্বান (২০১৩-২০১৪ শিক্ষাবর্ষ) সকল সরকারী ও বেসরকারী মেডি-কল ও ডেন্টাল ক-লজ/ইনস্টিটিউট এর জন্য প্র-যাজ্য।

- ১। ২০১৩-২০১৪ শিক্ষাব-র্ষ এমবিবিএস ও বিডিএস কোর্স ভর্তির জন্য আ-বদন অনলাই-ন নির্ধারিত ছ-ক এবং নিম্নলিখিত শর্তাধী-ন আহ্বান করা হ-চ্ছ।
- ২। ... ..

৩। সকল দেশী-বিদেশী শিক্ষা কার্যক্রমে এসএসসি ও এইচএসসি বা সমমান দুটি পরীক্ষায় মোট জিপিএ কমপক্ষে ৮.০০ হ-ত হ-ব ত-ব এককভা-ব কোন পরীক্ষায় জিপিএ ৩.৫০ এর কম হ-ল আব-দন যোগ্য হ-ব না।

৪। ... ..

১৫। ... ..

অধ্যাপক ডাঃ এবিএম আব্দুল হান্নান  
পরিচালক  
চিকিৎসা শিক্ষা ও স্বাস্থ্য জনশক্তি উন্নয়ন  
-ফোন-৮৮২৫৪০০, ফ্যাক্স-৯৮৮৬৬১২”

From the above, it is clear that students who have got GPA 8.00 in HSC/SSC examination, but not less than GPA 3.50 in any of the above examinations are eligible to take admission into the MBBS/BDS courses. The petitioners of both the Rules obtained GPA 8.00 in HSC/SSC examinations having GPA 3.50 in any of the examinations. So in terms of the advertisement (Annexure-E), the petitioners are eligible to appear at the admission test and they are also eligible for admission into the MBBS/BDS courses.

(2) **The Nitimala, 2011 promulgated by the Ministry of Health and Family Welfare (Annexure-C);**

The Ministry of Health and Family Welfare promulgated a Nitimala for setting the criteria for admission into the

MBBS/BDS courses in different medical colleges and dental colleges.

Let us quote the relevant paragraph of the Nitimala, 2011 which runs as under:

“গণপ্রজাতন্ত্রী বাংলা-দশ সরকার  
স্বাস্থ্য ও পরিবার কল্যাণ মন্ত্রণালয়  
বাংলা-দশ সচিবালয়, ঢাকা।  
[www.mohfw.gov.bd](http://www.mohfw.gov.bd)

বিষয় : -মডি-কল/ডেন্টাল ক-ল-জ এমবিবিএস/বিডিএস কো-র্স  
ছাত্র/ছাত্রী ভর্তি নীতিমালা-২০১১।

নিম্নোক্ত নীতিমালা বাংলাদেশের সকল সরকারী/বেসরকারী  
মেডি-কল/ডেন্টাল ক-ল-জ ২০১১-২০১২ শিক্ষাবর্ষ হ-ত  
এমবিবিএস/বিডিএস কোর্সে ছাত্র/ছাত্রী ভর্তির ক্ষেত্রে কার্যকরী হ-ব।  
প্রার্থীর যোগ্যতা :

১.১ .....

১.২ বিজ্ঞান বিভাগসহ এসএসসি ও এইচএসসি বা সমমান দুটি  
পরীক্ষায় মোট জিপিএ কমপক্ষে ৮.০০ হ-ত হ-ব, ত-ব  
এককভা-ব কোন পরীক্ষায় জিপিএ ৩.৫০ এর কম গ্রহণ-যোগ্য  
নয়।

১.৩ ....

.....

স্বা/- অস্পষ্ট  
(আকতারী মমতাজ)  
যুগ্ম-সচিব (উঃ ও চিশিজ  
স্বাস্থ্য ও পরিবার কল্যাণ মন্ত্রণালয়”

(emphasis supplied)

The Nitimala, 2011 has been given effect from the session 2011-2012 and it is equally applicable for the subsequent

sessions for admission into the MBBS/BDS course. This Nitimala was promulgated in 2011 by the Ministry of Health and Family Welfare and this Nitimala has not been cancelled as yet. This means the Nitimala still exists.

According to the Nitimala, 2011, the petitioners in both the Rules are qualified to get admission into the BDS Course as the petitioners are from science group and they have obtained GPA 8.00 in HSC/SSC examinations and they have not got less than GPA 3.50 in any of the examinations.

**(3) The meeting held in the Ministry of Health and Family Welfare on 04.12.2012 and the decision taken therein (Annexure-D);**

A meeting held in the Ministry of Health and Family Welfare on 04.12.2012. The relevant portion of the resolution of the meeting dated 04.12.2012 is quoted below which runs as under:

“গণপ্রজাতন্ত্রী বাংলা-দশ সরকার  
স্বাস্থ্য ও পরিবার কল্যাণ মন্ত্রণালয়  
চিকিৎসা শিক্ষা-১ শাখা  
বাংলা-দশ সচিবালয়, ঢাকা।  
[www.mohfw.gov.bd](http://www.mohfw.gov.bd)

...

বিষয় : বেসরকারী মেডি-কল ক-লজ / ডেন্টাল ক-লজ / ইউনিট / ইনস্টিটিউট এ ২০১২-২০১৩ সেশ-ন এমবিবিএস / বিডিএস কো-র্স ছাত্র / ছাত্রী ভর্তি প্রসংগে।



উপর্যুক্ত বিষয়ে নির্দেশক্রমে জানানো যাচ্ছে যে, বেসরকারী মেডি-কল ক-লজ / ডেন্টাল ক-লজ / ইউনিট / ইনস্টিটিউট এ ২০১২-২০১৩ সেশনে এমবিবিএস / বিডিএস কোর্সে ছাত্র / ছাত্রী ভর্তি কার্যক্রম পরিচালানার জন্য নি-ম্নবর্ণিত পদ্ধতি অনুসৃত হ-বঃ

(ক) বেসরকারী মেডি-কল ক-লজ / ডেন্টাল ক-লজ / ইউনিট / ইনস্টিটিউট এ ২০১২-২০১৩ সেশ-ন এমবিবিএস এবং বিডিএস-এ ভর্তির জন্য ছাত্র / ছাত্রী ভর্তি পরীক্ষায় যথাক্রমে নূন্যতম ১১০ ও ১০৫ নম্বর প্রাপ্ত হ-ল ভর্তির জন্য বি-বচিত হ-ব।

....

স্বাক্ষর-অস্পষ্ট  
(ড. মাসুমা পারভীন)  
সিনিয়র সহকারী সচিব  
-ফোন-৭১৬৯৩০”

(emphasis supplied)

From the above, it is clear that the cut-off mark for admission into the MBBS course was fixed at 110 and for the BDS course was fixed at 105. This cut-off mark was fixed for the students who were willing to take admission into the MBBS/BDS courses for the session 2012-2013. (emphasis supplied)

It is true that the petitioners in both the Rules applied for admission into BDS course for the sessions 2013-2014 (emphasis supplied). The above cut-off mark was set for admission seekers

into the MBBS/BDS courses for the session 2012-2013. So, strictly the above cut-off mark is not applicable for the petitioners, as the petitioner applied for admission into the BDS course for the session 2013-2014.

(4) **The meeting held in the Ministry of Health and Family Welfare on 23.9.2013 and the decision taken therein (Annexure-B);**

A meeting held in the Ministry of Health and Family Welfare on 23.9.2013 and the decision taken therein is necessary for discussion for effective disposal of the Rules:

The relevant decisions taken in the meeting dated 23.9.2013 is quoted below which runs as under:

“গণপ্রজাতন্ত্রী বাংলা-দশ সরকার  
স্বাস্থ্য ও পরিবার কল্যাণ মন্ত্রণালয়  
চিকিৎসা শিক্ষা-১ শাখা  
বাংলা-দশ সচিবালয়, ঢাকা।  
[www.mohfw.gov.bd](http://www.mohfw.gov.bd)

বিষয় : এমবিবিএস/বিডিএস কোর্সে ১ম বর্ষে ছাত্র/ছাত্রী ভর্তি পরীক্ষায় পাশ নম্বর ঢাকা বিশ্ববিদ্যালয়-এর অন্যান্য কোর্সের অনুরূপ শতকরা ৪০ নম্বর নির্ধারণ সংক্রান্ত সভার কার্যবিবরণী।

সভাপতি : অধ্যাপক ডাঃ আ. ফ. ম. রুহুল হক  
মাননীয় মন্ত্রী  
স্বাস্থ্য ও পরিবার কল্যাণ মন্ত্রণালয়।

তারিখ : ২৩.০৯.২০১৩ খ্রিঃ

সময় : সকাল ১১ঃ৩০ টায়।

স্থান : মন্ত্রণালয়-র স-স্মলন কক্ষ।

সভায় উপস্থিত সদস্যবৃন্দগণ তালিকাঃ পরিশিষ্ট ক তে সন্নি-বশিত  
র-য়-ছ।

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১। ... ..

২। ... ..

৩। ... ..

৪। অধ্যক্ষ, ঢাকা মেডি-কল ক-লজ, অধ্যক্ষ, এনাম মেডি-কল  
ক-লজ এবং সভাপতি বেসরকারী মেডি-কল ক-লজ সভা-ক জানান যে,  
২০১২-২০১৩ সেশনে এমবিবিএস/বিএস কোর্সে ছাত্র/ছাত্রী ভর্তি  
পরীক্ষায় সিদ্ধান্ত আ-গই চূড়ান্ত হ-য়-ছ। কা-জই এই মূহু-র্ত মেডি-কল  
কলেজে ভর্তি পরীক্ষায় পাশের ক্ষেত্রে বেঞ্চ মার্ক নির্ধারণ করা সমীচীন  
হবে না। অধ্যক্ষ, ঢাকা মেডিকেল কলেজ, ব্যক্তিগত ভাবে একটি cut-  
off নম্বর থাকা উচিত ব-ল সভায় মতামত দেন। ত-ব তা অন্যান্য  
বিশ্ববিদ্যালয়-র মতামত নি-য় পরবর্তী-ত এ বিষ-য় একটা সিদ্ধান্ত নেওয়া  
যেতে পারে মর্মে মতামত ব্যক্ত করেন।

৫। ... ..

১০। ... ..

১১। সভায় বিস্তারিত আ-লাচনা-স্ত নিম্নবর্ণিত সুপারিশ গৃহীত

হয়ঃ

এমবিবিএস/বিডিএস কো-র্স ভর্তি পরীক্ষায় ২০০ নম্ব-র

মধ্যে ১২০ নম্বরের ভিত্তিতে ছাত্র/ছাত্রী ভর্তি করা হবে।

....

স্বাক্ষরিত/-

তারিখঃ ০২/১০/২০১৩

(অধ্যাপক ডাঃ আ.ফসম. রুহুল হক)

মাননীয় মন্ত্রী

স্বাস্থ্য ও পরিবার কল্যাণ মন্ত্রণালয়।”

(emphasis supplied)

From the above, we find that this decision was taken for the students who were willing to take admission into the MBBS/BDS courses in different medical colleges / dental colleges for the session 2013-2014. The present petitioners also applied for admission into the BDS course for the sessions 2013-2014. So, apparently the decision taken in the meeting dated 23.9.2013 (Annexure-B) seems to be applicable for the petitioners. But the discussions made hereinafter will show that the decision taken in the meeting dated 23.9.2013 will not be applicable for the petitioners.

(5) **The judgment and order passed by the High Court Division in Writ Petition No. 1337 of 2014 (Annexure-H);**

Against the decision dated 23.9.2013 (Annexure-B) taken by the Ministry of Health and Family Welfare, the Bangladesh Private Medical College Association (BPMCA) filed a Writ Petition No. 1337 of 2014 challenging the raising of the minimum cut-off mark at 120 out of 200 for admission into the MBBS course for the session 2013-2014. It may be mentioned here that though the raising of cut-off mark at 120 was fixed for the admission of both the MBBS and the BDS courses, the

BPMCA filed the Writ Petition No. 1337 of 2014 only for the students willing to take admission into the MBBS course. None from the students of BDS course challenged the raising of cut-off mark at 120. After hearing both the sides, a Division Bench of this Court held as under:

*“The Nitimala in its flag end mentioned about a committee, which will be responsible implementing the Nitimala 2011, however, neither in the letter dated 04.12.2012, nor in any other letters of circular, we could find any mention about the committee, which clearly reflects that the respondents are acting just at their own caprice and whim without bothering to adhere to their own Nitimala, and apart from that they are not even obliging their own letter dated 07.01.2014 for admission into MBBS and BDS with the cut-off mark of 105. .... as such, denying admission to students securing cut-off mark 105 and / or above is nothing but colourable exercise of power since it the respondents themselves have set the new cut-off*

*mark for admission into MBBS and BDS for the academic session 2013-2014.*

*In the premises set forth above, we are of the view that the Rule deserves merit and the respondents be directed to allow the private medical colleges to admit students for the academic session 2013-2014 with a cut-off mark at 105.”*

The High Court Division by the above judgment in no uncertain terms held that the cut-off mark for the students for admission in the academic session 2013-2014 would be 105.

In our opinion the word, “students” mentioned in the judgment of the High Court Division passed in Writ Petition No. 1337 of 2014 would mean the “students” willing to take admission into the MBBS course. Because, the Writ Petition No. 1337 of 2014 was filed by the BPMCA challenging the raising of cut-off mark at 120 for the students willing to take admission into the MBBS course. But the decision taken in the meeting dated 23.9.2013 increasing the cut-off mark at 120 was directed for the students who were willing to take admission in both the MBBS and BDS courses.

So, with all fairness the direction of the High Court Division passed in Writ Petition No. 1337 of 2014 to allow the Private Medical Colleges to admit students for the academic session 2013-2014 with the cut-off mark at 105 would be applicable for the students willing to take admission into the MBBS course and it would not be applicable for the present petitioners as they are willing to take admission into the BDS course. However, even if we take that the cut-off mark 105 fixed by the High Court Division in Writ Petition No. 1337 of 2014 is applicable only for the students willing to take admission into the MBBS course, the present petitioners will be equally benefited because they all have obtained mark above 105 in their admission test.

- (6) **The judgment passed by the Appellate Division in Civil Appeal No. 147 of 2015 with Civil Petition for Leave to Appeal Nos. 1110 of 2015 and 1111 of 2015 dated 16.9.2015 (Annexure-H1).**

Against the judgment and order of the High Court Division passed on 18.9.2014 in Writ Petition No. 1337 of 2014, a Civil Appeal No. 147 of 2015, Civil Petition for Leave to Appeal No. 1110 of 2015 and 1111 of 2015 were filed and the Appellate Division dismissed the appeal and held as under:

*“Admittedly, the impugned decision raising the minimum “cut-off” mark from 110 to 120 was taken by a committee headed by the respondent No. 1 and not by the council, namely, Bangladesh Medical and Dental Council (BMDC) which has been formed as per law, namely, Bangladesh Medical and Dental Council Act, 2010. Section 5 of this Act shows that this Council (BMDC) is empowered to deal with almost all the matters relating to Medical and Dental Institutions including framing of guidelines etc. for admission to M.B.B.S. and B.D.S. courses. The setting of “cut-off” mark for being eligible for admission to M.B.B.S. and B.D.S. courses falls within these powers of BMDC and as such the BMDC only is empowered to fix or set the minimum “cut-off” mark for being eligible for admission to these courses. Admittedly, the impugned decision raising the “cut-off” mark from 110 to 120 was not taken by this BMDC, rather it was taken by the respondent No. 1 and some other persons. ....*



*So, it is apparent that the impugned decision raising the “cut-off” mark from 110 to 120 being not taken by the BMDC was coram non-judice and as such illegal.*

.....

*This civil appeal thus be dismissed with the above observations.”*

From the above decision of the Appellate Division, we find that the decision taken in the meeting dated 23.9.2013 by the Ministry of Health and Family Welfare (Annexure-B) was coram non-judice and illegal.

In the meeting dated 23.9.2013 (Annexure-B), the cut-off mark at 120 was fixed for MBBS/BDS courses. But this decision dated 23.9.2013 has been declared illegal and coram non judice by the Appellate Division. So, legally there is no existence of the decision of the meeting dated 23.9.2013 and as such there is no existence of the cut-off mark 120 any more.

In the Nitimala, 2011 (Annexure-C) there is no mention of cut-off mark at all. In the decision dated 04.12.2012 taken by the Ministry of Health and Family Welfare (Annexure-D), the cut-off mark was fixed at 110 for the students willing to take

admission into the MBBS course and at 105 for the students willing to take admission into the BDS course. But this cut-off mark was fixed for the students who were willing to take admission for the session 2012-2013. This cut-off mark 110 and 105 for the students willing to take admission into the MBBS/BDS courses shall not be applicable for the petitioners as they are willing to take admission for the session 2013-2014.

In fact, after the judgment passed by the Appellate Division in Civil Appeal No. 147 of 2015, there was no in existence of any cut-off mark for the students willing to take admission into MBBS/BDS courses for the sessions 2013-2014. Because the cut-off mark 120 fixed by the Ministry of Health and Family Welfare in its meeting dated 23.9.2013 for the session 2013-2014 has been declared illegal and coram non-judice by the Appellate Division by its judgment and order dated 16.9.2015. Precisely, the cut-off mark 105 fixed by the High Court Division in Writ Petition No. 1337 of 2014 is applicable for the students willing to take admission into the MBBS course and this cut-off mark 105 fixed by the High Court Division in Writ Petition No. 1337 of 2014 is not applicable for the students willing to take admission into the BDS course, because Writ

Petition No. 1337 of 2014 was filed by the BPMCA for the students willing to take admission into the MBBS course only.

However, through vigorous search, we find one letter dated 7.1.2014 (Annexure-G) issued by the Director of the Directorate of Health. This letter dated 7.1.2014, was addressed to the Secretary, Ministry of Health and Family Welfare by the Director of the Directorate of Health. In this letter, the Director of the Directorate of Health recommended to fix up the cut-off mark at 105 for the students willing to take admission into both the MBBS and the BDS courses and also recommended to extend the period of admission upto 31.1.2014. In response to the letter dated 7.1.2014, issued by the Director of the Directorate of Health, the Secretary, Ministry of Health and Family Welfare did not say a word about the fixation of cut-off mark at 105 but extended the time for admission upto 15.7.2014.

For proper appreciation, the letter dated 7.1.2014 issued by the Director of the Directorate of Health, addressed to the Secretary Ministry of Health and Family Welfare is quoted below which runs as under:

“গণপ্রজাতন্ত্রী বাংলা-দশ সরকার  
স্বাস্থ্য অধিদপ্তর  
মহাখালী, ঢাকা-১২১২

[www.dghs.gov.bd](http://www.dghs.gov.bd)

নং-স্বাঃঅধিঃ/চিঃশিঃ/বিবিধ বিষয়/২০১২/৩১ তারিখ :  
০৭.০১.২০১৪ইং

বরাবর  
সচিব  
স্বাস্থ্য ও পরিবার কল্যাণ মন্ত্রণালয়  
বাংলা-দশ সচিবালয়, ঢাকা।

দৃষ্টি আকর্ষণ : অতিরিক্ত সচিব (চিকিৎসা শিক্ষা ও উন্নয়ন)

বিষয় : ২০১৩-২০১৪ শিক্ষাব-র্ষ ১ম বর্ষ এমবিবিএস কো-র্স ভর্তির  
যোগ্যতা পুনঃনির্ধারণ ক-র পরীক্ষায় অংশগ্রহণকারী ছাত্র-ছাত্রীদের জন্য  
সর্বনিম্নস্কোর ১০৫ করণ এবং -বসরকারী মেডি-কল ক-ল-জ ভর্তির  
শেষ সময় ৩১-শ জানুয়ারী ২০১৪ করণ প্রসং-গ।

উপর্যুক্ত বিষয় ও সূত্র মোতাবেক জানা-না যা-চ্ছ যে, ২০১৩-২০১৪  
শিক্ষাব-র্ষ -বসরকারী মেডি-কল ক-লজ সমূ-হ ১ম বর্ষ এমবিবিএস কো-র্স ভর্তির  
ক্ষেত্রে এমবিবিএস/বিডিএস ভর্তি পরীক্ষায় অংশগ্রহণকারী ছাত্র-ছাত্রীদের জন্য  
-বসরকারী মেডি-কল ক-ল-জ ভর্তির জন্য উন্মুক্ত করে ভর্তির সময়সীমা ৩১-শ  
জানুয়ারী ২০১৪ ইং পর্যন্ত বর্ধিত করার জন্য বাংলা-দশ প্রাই-ভেট মেডি-কল  
ক-লজ এ-সাসি-য়েশন এর সাধারণ সম্পাদক ও অর্থ সম্পাদক একই আ-বদ-ন  
অনু-রাধ ক-র-ছেন।

এমতাবস্থায়, বিষয়টি বি-বচনা পূর্বক ২০১৩-২০১৪ শিক্ষাব-র্ষ  
এমবিবিএস/বিডিএস ভর্তি পরীক্ষায় অংশগ্রহণকারী ছাত্র/ছাত্রীদের জন্য  
বেসরকারী মেডি-কল ক-ল-জ ভর্তির জন্য সর্বনিম্নস্কোর ১০৫ ক-র ভর্তির  
সময়সীমা ৩১-০১-২০১৪ইং পর্যন্ত বর্ধিত করার প্র-য়োজনীয় ব্যবস্থা গ্রহ-ণের জন্য  
অনু-রাধ করা হ'ল।

এ-ত মহাপরিচালক ম-হাদ-য়ের সদয় সম্মতি আ-ছ।

সংযুক্ত : বাংলাদেশ প্রাইভেট মেডিকেল কলেজ এসোসিয়েশন এর  
সাধারণ সম্পাদক ও অর্থ সম্পাদক কর্তৃক আবেদনপত্র-০১ পাতা।

(অধ্যাপক ডাঃ এবি এম আব্দুল হান্নান)  
 পরিচালক  
 চিকিৎসা শিক্ষা ও স্বাস্থ্য জনশক্তি উন্নয়ন  
 -ফোন টু ৮৮২৫৪০০, ফ্যাক্স- ৯৮৮৬৬১২  
 Email:abmhannan@gmail.com

অনুলিপিঃ

১। মহাপরিচালক, স্বাস্থ্য অধিদপ্তর, মহাখালী, ঢাকা-১২১২। (দৃষ্টি আকর্ষণঃ-সহকারী পরিচালক, সমন্বয়)”

(emphasis supplied)

Again, the letter dated 2.2.2014 issued by the Ministry of Health and Family Welfare is quoted below which runs as under:

“গণপ্রজাতন্ত্রী বাংলা-দশ সরকার  
 স্বাস্থ্য ও পরিবার কল্যাণ মন্ত্রণালয়  
 চিকিৎসা শিক্ষা-১ শাখা  
 বাংলা-দশ সচিবালয়, ঢাকা

নং-স্বাপকম/চিশি-১/ছাত্র ভর্তি-১/২০১২/৬৫ তারিখ : ০২.০২.২০১৪  
 প্রিঃ

বিষয় : -বসরকারী মেডি-কল ও ডেন্টাল/ডেন্টাল ইউনিট ২০১৩-২০১৪  
 শিক্ষাব-র্ষ ছাত্র-ছাত্রী ভর্তির সময়সীমা বর্ধিতকরণ প্রসংগে।

উপর্যুক্ত বিষয়ে নির্দেশক্রমে জানানো যাচ্ছে যে, বেসরকারী মেডি-কল ও ডেন্টাল / ডেন্টাল ইউনিট ২০১৩-২০১৪ শিক্ষাবর্ষে ছাত্র-ছাত্রী ভর্তির সময়সীমা আগামী ১৫.০২.২০১৪ তারিখ পর্যন্ত বর্ধিত করা হ-লা।

(মতিউর রহমান)  
 যুগ্ম সচিব  
 -ফোন-৯৫৪০৭৩০

মহাপরিচালক  
 স্বাস্থ্য অধিদপ্তর  
 মহাখালী, ঢাকা  
 (দৃঃ আঃ পরিচালক, চিকিৎসা শিক্ষা)।

অনুলিপি সদয় জ্ঞাতার্থে (জ্যেষ্ঠতার ক্রমানুসারে নহে):

- ১। মন্ত্রী ম-হাদ-য়র একান্ত সচিব, স্বাস্থ্য ও পরিবার কল্যাণ মন্ত্রণালয়।
- ২। ডীন, মেডিসিন ফ্যাকাল্টি, ঢাকা বিশ্ববিদ্যালয়, ঢাকা।
- ৩। রেজিস্ট্রার, ঢাকা বিশ্ববিদ্যালয়, ঢাকা।
- ৪। সি-স্টম এ্যানালিষ্ট, স্বাস্থ্য ও পরিবার কল্যাণ মন্ত্রণালয় (ও-য়ব সাই-ড প্রকা-শর জন্য অনু-রাধ করা হ-লা)।”

(emphasis supplied)

From the above, it is clear that the recommendation of the Director of Health to fix up the cut-off mark at 105 was not accepted by the Secretary, Ministry of Health and Family Welfare. However, the Secretary, Ministry of Health and Family Welfare extended the period of admission upto 15.2.2014.

So, taking everything into consideration, we do not find any cut-off mark for the students willing to take admission into the BDS courses for the session 2013-2014.

Since there is no cut-off mark for the students willing to take admission into the BDS course for the session 2013-2014, we may go back to the Nitimala, 2011 (Annexure-C) and the advertisement dated 31.8.2013 (Annexure-E). In the Nitimala, 2011 (Annexure-C) the condition laid down for admission into the MBBS/BDS courses is that the students must obtain GPA 8.00 both in HSC and SSC examinations but not less than GPA 3.50 in any of the examinations. In the advertisement for

admission into the MBBS/BDS courses (Annexure-E) for the session 2013-2014, it has also been stated that the students willing to get admission into the MBBS/BDS courses must get GPA 8.00 in both HSC and SSC examinations but not less than GPA 3.50 in any of the examinations. The petitioners in both the Writ Petitions have got GPA 8.00 and they have got not less than GPA 3.50 in any of the HSC/SSC examinations. So, they are eligible to get admission into the BDS course. They have already got admission into the BDS course in different medical colleges / dental unit and they have been continuing their study till date. The petitioners are the admission seekers for the BDS course. Although there is no compulsion for the petitioners to get the cut-off mark 105 for admission into the BDS course for the session 2013-2014, we just want to record that all the petitioners got minimum 105 marks in their admission test.

The petitioners have been successfully studying in the BDS course in various medical colleges. Therefore, there is no earthly reason to refuse the registration number of the petitioners.

Considering all these facts and circumstances and the discussions made hereinbefore, we find merit in both the Rules.

Accordingly, both the Rules issued in Writ Petition Nos. 11905 of 2015 and 11582 of 2015 are made absolute.

The respondents are directed to give registration number to the petitioners immediately.

There is no order as to costs.

Razik-Al-Jalil, J:

I agree.